



February 5, 1999

Ms. Bertha Bailey Whatley  
Attorney  
Fort Worth Independent School District  
100 N. University Drive  
Fort Worth, Texas 76107-1360

OR99-0342

Dear Ms. Whatley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121976.

The Fort Worth Independent School District (the "school district") received a request for the following information:

- (1) copies of all non-instructional reclassification requests filed with the Compensation Dept. in 1998;
- (2) a list of all non-instructional reclassification requests approved in 1998;
- (3) names of all applicants for the position of Locksmith, File No. MT-446 posted September 3, 1998 with a filing deadline of September 18, 1998.
- (4) names of all applicants for the positions of Carpenter II, Modified Carpenter II, and Modified Carpenter I, File No. MT-269 posted May 13, 1998 with a filing deadline "open until filled."

You contend that this information is excepted from disclosure pursuant to sections 552.101, 552.102, and 552.111 of the Government Code.<sup>1</sup> We have considered the exceptions you

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<sup>1</sup>The requestor contends that you did not seek an open records decision within ten business days as required by section 552.301 of the Government Code. You state, and the receipt date stamped on the request confirms, that the school district received the request for information on November 2, 1998. You requested a decision from this office ten business day later on November 16, 1998. Thus, we conclude that you have met the requirements of section 552.301.

claim and have reviewed a representative sample of the documents at issue.<sup>2</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.102 of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 excepts information in personnel files only if it meets the test articulated under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Accordingly, we will consider your section 552.101 and section 552.102 claims together.

For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. The court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

In Open Records Decision No. 455 (1987), we concluded that the following information is not protected by privacy: applicants' educational training; names and addresses of former employers; dates of employment; kind of work, salary, and reasons for leaving; names, occupations, addresses and phone numbers of character references; job performances or abilities; and names of friends or relatives employed by the governmental body. The information at issue here is similar to the information we considered in Open Records Decision No. 455 (1987). Based on the reasoning set out in that open records decision, we conclude that none of the information at issue is excepted from disclosure pursuant to sections 552.101 and 552.102.

You also contend that the submitted documents should be excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no

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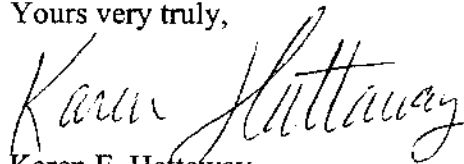
<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. However, an agency's policymaking functions do not encompass internal administrative or personnel matters, as disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. ORD 615 at 4-5. The submitted documents relate to the school district's routine administrative and personnel functions. Therefore, these documents are not excepted from disclosure under section 552.111.

Finally, you state that "social security number information would be redacted" from the submitted documents. We note that section 552.117 of the Government Code excepts from disclosure the social security numbers of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the school district may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Social security numbers may also be excepted from required public disclosure under section 552.101 in conjunction with federal law. The 1990 amendments to the federal Social Security Act, § 42 U.S.C. § 405(c)(2)(C)(viii)(I), make a social security number confidential if it is obtained or maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Karen Hattaway".

Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 121976

Enclosures: Submitted documents

cc: Mr. Larry Shaw  
United Educators Association  
4900 S.E. Loop 820  
Fort Worth, Texas 76140  
(w/o enclosures)